

**PLANNING AND ZONING COMMISSION  
MINUTES  
PUBLIC HEARING/GENERAL MEETING  
July 22, 2003**

PLACE: Room 206  
Town Hall

TIME: 8:00 P.M.

PLANNING AND ZONING COMMISSION MEMBERS ATTENDING:  
Damanti, Forman, Conze, Kenny, Spain, Bigelow (arrived at 8:55pm)

STAFF ATTENDING: Ginsberg, Keating

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Chairman Damanti read the following agenda item:

**PUBLIC HEARING**

**Special Permit Application #203-A, Aux Delices, Inc., 25 Old King's Highway North.** Proposing to establish a convenience food store and caterer with both indoor and seasonal outdoor seating in a 1,350 square foot space within the Goodwives Shopping Center. The subject property is on the south side of Old King's Highway North, approximately 150 feet southwest of its intersection with Brookside Road, and is shown on Tax Assessor's Map #71, as Lot #19, in the DC Zone.

Attorney Wilder Gleason represented the applicant and explained that the proposal involved opening a gourmet food store within the Goodwives Shopping Center. The applicant proposed to occupy approximately one half of the space formerly occupied by The Darien Bootery. The other half of the space is KaBloom Florist Shop. Attorney Gleason said that the applicant operates two similar retail stores in Greenwich and they have opened a kitchen and warehouse facility in Stamford. The plan is to prepare most of the food at the Stamford kitchen and truck it to the Darien and Greenwich stores for sale. The foods would be prepared meals most of which would be taken home to be consumed. Attorney Gleason said that they would like to have eight seats at the store for the convenience of some patrons who wish to eat at the site. Some of the seats would be inside and, during good weather, the balance of the seats would be on the front sidewalk outside the front entrance to the store. At no time would there be more than a total of eight seats inside and outside. David Halek, the vice president of Aux Delices, said that the store would be about three doors away from the existing Coromandel Restaurant within Goodwives Shopping Center. He said that Aux Delices opened their fourth store in Greenwich in 1995, and that their acclaimed chef has a very wide following. They will be preparing and selling gourmet luncheon and dinner entrees and providing catering services. They do plan to open in the morning so that people can get breakfast, bakery items, and coffee. He said that there would be very limited on site consumption and that there would be no wait staff service of the tables. There would be hot and cold display cases, and that the store would generally be open seven days a week from 7:30 a.m. until 6:30 p.m. The store might be open later depending on the requirements of the landlord.

Attorney Gleason said that they have submitted an application to the Architectural Review Board and that there is a letter of support for the design of the sign. He also noted that the Darien store will not have a complete kitchen facility, but would have a soup warmer, coffee preparation area, and other minor facilities of that nature. The preparation of food would occur in the Stamford facility and the catering would occur out of the Stamford facility as well.

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David Halek said that they expect two to three deliveries per day from their Stamford kitchen and that the deliveries would be made at the rear of the store, and therefore will not effect customer parking or access to the front of the store. He said that there would be no liquor license. In response to questions, David and Greg Adinizio said that they would be making coffee on the site and that there would be a microwave oven on the site, but no further kitchen facilities.

In response to other questions, Mr. Halek said that they would have one or two tables located outside and two or four seats located outside. The sidewalk in front of the store is very wide and the tables and chairs would not obstruct pedestrian access to the area. He said that they will not be waiting on the tables, but that if a customer wants to have their coffee and pastries or their drink and sandwich outside during nice weather, that would be encouraged. Mr. Damanti noted that there is a wide sidewalk in the area and did not think a few tables and chairs would obstruct the sidewalk. It was noted that the total number of seats inside and outside cannot exceed eight, otherwise the facility would be considered a restaurant use.

Attorney Gleason noted that the applicant needs to finalize details with the landlord about the use of the sidewalk area. If they are allowed to have tables and chairs on the sidewalk, they will be providing a trash container in that vicinity. He said the applicant would be willing to try the outdoor seats for one year as an experiment, so that the Commission could require any changes or modifications if there are any problems. He said that the storefront is approximately 14' wide and that there is about a 10' wide area available for tables and chairs without obstructing the access doorway. He confirmed that the total number of seats, both inside and outside, would not exceed eight.

There were no new comments from the general public regarding the application. The following motion was made: That the Commission close this portion of the Public Hearing. The motion was made by Mr. Conze, seconded by Mr. Kenny and unanimously approved.

Chairman Damanti read the following agenda item:

**Requested Amendment of Subdivision Application #481-A, Land Filling Application #42-B, Dominick & Annette Miceli, Wakeman Road.** Proposing to adjust existing lot lines, add fill and regrade within 15 feet of property lines, construct two single-family residences, and perform related site development activities. The subject properties are located on the west side of Wakeman Road, approximately 230 feet north of its intersection with Old King's Highway North, and are shown on Tax Assessor's Map #32, as Lots #28-A and #28-B in the R-1/2 and Wakeman Road Affordable Housing Overlay Zones.

Attorney Bruce Hill represented the applicants and explained that there are two separate parcels and two separate property owners. The north lot is owned by Dominick Miceli and the south lot is owned by his sister-in-law, Annette Miceli. Attorney Hill reminded the Commission that there have been several previous applications regarding the properties which were originally created as part of a 1972 subdivision. That subdivision would have required the filling of considerable wetlands in order to create a septic system area for each lot. The properties have never been developed, and subsequent to the approval of the subdivision lots, the inland wetlands regulations have taken effect. Sanitary sewers are now available in the area and therefore there is no need to create on site septic systems. The applicants propose to reconfigure the two lots so that each lot would be able to accommodate one house and each house would be close to the street. This design will minimize the amount of filling

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and regrading necessary and will minimize the amount of wetlands to be filled. The Environmental Protection Commission has granted approval for the proposed plan and the Zoning Board of Appeals has granted the necessary variances to allow the reconfiguration of the properties and construction of the residences.

Attorney Hill distributed copies of a revised plan dated November 2, 2000. He said that this plan reflects the approvals granted by the Environmental Protection Commission and the Zoning Board of Appeals. He noted the site plan drawing prepared by Stearns & Wheler. This drawing shows the proposed grading and drainage configuration. He said the amount and location of fill matches the fill approved by the Planning and Zoning Commission as part of the previously approved zone change for affordable housing. He said that on the north lot (owned by Dominick Miceli) there would be approximately 509 cubic yards of earth work, some of which is fill and some of which is removal. The south lot (owned by Annette Miceli) would be approximately 449 cubic yards of earth work. The combined total of fill material for the two lots is 786 cubic yards.

Attorney Hill submitted copies of the following documents: the February 29, 2000 Resolution adopted by the Planning and Zoning Commission regarding the zone change; the January 24, 2001 Resolution adopted by the Zoning Board of Appeals regarding Calendar #90-2000; the January 10, 2001 Resolution adopted by the Environmental Protection Commission approving EPC 56-2000; a report dated November 8, 2000 prepared by Donald Smith PE who reviewed the previous applications on behalf of the Town. Mr. Hill read from a portion of page three of Mr. Smith's report indicating that the project "will not cause an increase in the "flooding" experienced in the area." Attorney Hill said that the land filling proposed for the two houses is identical to the land filling that had been analyzed by Mr. Smith and previously approved by the Commission. Attorney Hill submitted a copy of the October 1998 hydraulic analysis with the November 2, 2000 addendum. Attorney Hill said that there still is an appeal from the neighbors pending in court regarding the previous approvals that have been granted. If all necessary permits are obtained for the construction of the two separate houses and if there are no appeals of those approvals and permits, then the applicants will apply to the Planning and Zoning Commission to eliminate the Wakeman Road affordable housing overlay zone. The applicants will also preserve a substantial portion of the property that is wetland, and designate this area as permanent conservation easement for preservation, and to prevent further development activity. If the permit is not obtained or if there are any appeals, the applicants will not be able to request the elimination of the affordable housing overlay zone because to do so would be surrendering some of their existing property rights. Attorney Hill said that the lot line adjustment and the filling permit from the Planning and Zoning Commission are needed as the last approvals from local boards or commissions to facilitate the project. He said that the applicants must obtain a permit from the U.S. Army Corps of Engineers and Administrative Zoning and Building Permits to implement the project.

Lee Fingar of 6 Wakeman Road said that the proposed fill must go on top of a stream which has a 100 acre, plus or minus, watershed. He said that this proposed activity requires a water diversion permit from the Connecticut Department of Environmental Protection. Mr. Fingar also said that the Planning and Zoning Commission cannot override the existing Affordable Housing Overlay Zone. He read from Section 8-30g of the Connecticut General Statutes regarding amending the denied permit application for affordable housing projects. The Commission members noted that the section read by Mr. Fingar did not seem applicable because the current application is not an affordable housing project and the previous application to preview Affordable Housing Zone was not denied, it was modified and approved. Mr. Fingar claimed that the Commission does not have the jurisdiction to

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disregard the existing zone. The Commission members noted that the Affordable Housing Zone is an overlay zone that is placed on the property in addition to the underlying R-1/2 zone.

Attorney Hill noted that the Affordable Housing Overlay Zone is permissive in nature because it allows certain work to take place, but that it does not eliminate the underlying R-1/2 zone. It is not mandatory that they develop the property using the affordable housing standards, it is only an option. He said that the current application is to reconfigure the property lines and to obtain a permit for filling to allow for two single family houses. If this project is successful, the applicants will make a future application to eliminate the Affordable Housing Overlay Zone.

There were no further comments from the general public. The following motion was made: That the Commission close this portion of the Public Hearing. The motion was made by Mr. Conze, seconded by Mr. Spain and unanimously approved.

Chairman Damanti read the following agenda item:

**Amendment of Business Site Plan #135, Crystal Gardens, 934 Boston Post Road.** Proposing to amend previous approval to allow up to six employees on-site at any one time. The subject property is located on the southeast side of Boston Post Road, on the southwest corner of its intersection with Tokeneke Road, and is shown on Tax Assessor's Map #72, as Lot #1 in the CBD Zone.

Attorney Wilder Gleason said that the previous application, Business Site Plan #135, had been approved by the Commission in 1992 so that the space could be converted into a flower shop. He submitted a highlighted drawing illustrating the building location. He said that the building stretches from the Boston Post Road to the nearest intersection of Tokeneke Road and Center Street. On the Center Street side of the building, D'Iorio Printing occupies the first floor and the Darien Board of Realtors occupies the second floor. Each business has one or two workers on site. On the Boston Post Road side of the building, the customer accessible space for the florist occupies the first floor. The second floor or loft space and the basement are used exclusively for storage purposes.

Attorney Gleason said that as part of the 1992 approval, the Planning and Zoning Commission limited the number of workers on site to two people. About eight years ago, the business was successful enough that they had approximately twenty part-time employees. At the maximum, they had six workers at the site at any given time. Workers used the municipal parking area adjacent to Center Street and there were no complaints on record regarding parking problems or employee violations of the municipal parking area on Center Street. He said that the tenant wishes to formally request that the Commission allow up to six workers in the building and that the tenant is committed to buying parking vouchers as necessary for the workers. A ZBA variance was recently received to allow up to six employees.

Commission member Peter Bigelow arrived at the meeting at 8:55 p.m.

There were no further questions or comments from the Commission or the public. The following motion was made: That the Commission close this portion of the Public Hearing. The motion was made by Mr. Conze, seconded by Mrs. Forman and unanimously approved.

Chairman Damanti read the following agenda item:

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**Business Site Plan #184-A/Special Permit, Rory's Restaurant, 416 Boston Post Road.** Proposing to modify the existing restaurant by adding onto the existing kitchen, modifying the access drive and parking, and perform related site development activities. The subject property is on the southeast side of the Boston Post Road at the corner formed by the intersection of Boston Post Road and Old King's Highway North, and is shown on Tax Assessor's Map #32, as Lot #22, in the DB-2 Zone.  
WITHDRAWN

Chairman Damanti said that since the application has been withdrawn no public input will be received. He did not know whether the application would be resubmitted and a new public hearing date would be scheduled in the future.

Chairman Damanti read the following agenda item:

**Coastal Site Plan Review #53-F, Flood Damage Prevention Application #43-F, Ann B. Lunn, 8 Contentment Island Road.** Proposing to modify plans for the previously approved, but never constructed single-family residence and perform related site development activities within regulated areas. The subject property is located on the west side of Contentment Island Road approximately 439 feet south of its intersection with Tokeneke Beach Drive and is shown on Tax Assessor's Map #67 as Lot #63, R-1 Zone.

Attorney Robert F. Maslan, Jr. represented the property owner and noted that he had submitted proof of mailing of notification to neighboring property owners. He said that the Planning and Zoning Commission has previously approved the development of this property to include a four bedroom septic system, a four-bedroom house with approximately 4,000 square feet with an attached two-car garage. He said that they have been able to redesign the development activity within the very limited development area and they are now proposing a five bedroom septic system, a five-bedroom house with a three-car garage, and a deck and a swimming pool. Attorney Maslan said that the open space area to the south and the 50' wide conservation easement area adjacent to Scott's Cove will remain unchanged from the previous plan. He noted that there is a coastal report submitted by Judy Slayback of Environmental Design Solutions.

Commissioner Conze said that he has seen the application for this property many times in the past. He asked if this proposed construction would actually move forward and be implemented. Attorney Maslan said that a \$10,000 performance bond has been in place to guarantee that the sediment and erosion controls will be installed and maintained. He said that the property is for sale and has been marketed, but it is not marketable as a four-bedroom house. He said that it would be marketable as a five-bedroom house. Attorney Maslan did acknowledge that the 1987 subdivision approval was the first approval granted by the Commission, and that there have been four or five previous applications for the proposed development of the land.

Judy Slayback of Environmental Design Solutions noted that she worked on the project as part of the 1995 permit application that was approved. She was also involved in 1999 when the project was again submitted and approved. Since that time the driveway has been roughed in, the house location has been staked out by the land surveyor, permits have been obtained from the Connecticut Department of Environmental Protection Commission and the Planning and Zoning Commission for

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the installation of a floating dock and that structure has been installed, and a few trees have been cut in preparation for the development of the property.

Attorney Maslan said that the last approval granted by the Planning and Zoning Commission was in 1996. He referred to the resolution adopted by the Commission and noted that it is cited as Tab # 6 in the application documents submitted to the Commission. Mr. Spain questioned what extensions have been granted since 1999. Director of Planning, Jeremy Ginsberg said that the last extension granted by the Planning and Zoning Commission was scheduled to expire in June of 2001. However, in May of 2001, the Zoning and Building Permits were obtained and those are scheduled to expire sometime in 2003.

Attorney Maslan said that in a sense, the Commission could look at this as a fresh application with a new design. Mr. Spain asked why the reports and studies done in 1995, and at earlier times, would still be valid? Attorney Maslan said that Judy Slayback has updated her report and her letter dated June of 2003 and the engineer has updated his report as of June of 2003.

Environmental Consultant Judy Slayback said that the report on current conditions is based on today's site observations and today's site conditions. She said that the old information was used as a base of reference data, but that the report has been updated. She said that the septic system design has been designed by an engineer and has been reviewed and approved by the Health Department. She said that the coastal resources have remained unchanged and that the easement protecting the shoreline is unchanged. She said the only modifications to the site have been natural and gradual modifications of the sandy beach area due to storms and other conditions. She said that this type of change is natural and is not affected by any of the on site construction activities (driveways, staking out of the house, installation of the dock, etc.).

Attorney Maslan said that no approval is necessary from the Environmental Protection Commission because they deal with inland wetlands and this site contains only tidal wetlands. He said that there is no state of Connecticut Department of Environmental Protection Permit needed because they are not doing any work within the State jurisdiction. They only need to obtain Planning and Zoning Commission approval and then Zoning and Building Permits.

Mr. Kenny noted that the first floor of the house is proposed to be 15' above sea level. The grade around the house is proposed to be 10' above sea level. He asked how much fill would be brought in to accommodate the proposed construction. Ms. Slayback said that looking at the map she sees various spot elevations of 9.2 and 9.5 and similar existing grade elevations as shown on the 1995 survey of existing site conditions. She said that the fill around the house would be minimal, but that the details regarding the fill had been prepared by the site engineer, not by her firm.

Assistant Director of Planning, David Keating said that the grading plan is not detailed enough with respect to the amount of fill adjacent to the house. He said that according to the plan the invert elevation of the septic pipe (the bottom of the pipe) is 9.9' above sea level and the pipe is 4" in diameter, then part of the pipe would be above the 10' grade elevation. He also questioned the adequacy of the fill and topsoil covering the septic system. He said that there is a cross section drawing of a portion of the septic system, but not enough detail to make sure there will be sufficient cover over the entire septic system. Lily Barston, daughter of the applicant asked why these questions were not raised to the Health Official or raised to the applicant prior to the Public Hearing.

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Mr. Keating indicated that he tried to talk to the Health Official, but was unable to because Mr. Proto of the Health Department was not available during the previous week. There were several questions regarding the adequacy of the drawings and plans with respect to the amount of fill necessary and the amount of cover to be achieved over the underground utilities.

In response to a question, Attorney Maslan said that the timing of construction will depend on when the property sells and what the future owner wishes to build. Mr. Spain noted that construction must be in accordance with the approved plan which is calling for a four bedroom septic system and four bedroom house. If a new plan is approved construction must be in accordance with a new plan and not be modified without returning to the Commission. Attorney Maslan said that the purpose of the Coastal Site Plan Review is to protect the public vista points and coastal resources. In this case, there are no public vista points and the coastal resources have been protected by the design.

The Commission discussed the possibility of closing the Public Hearing and only utilizing the information submitted to date and its analysis, or continuing the Public Hearing so that the applicant can provide more detailed information regarding the amount of fill and other issues. Attorney Maslan briefly conferred with his clients and indicated that they wanted to continue the Public Hearing so that additional information could be presented. Unfortunately, the Commission does not have another Public Hearing scheduled until September 23<sup>rd</sup>. Attorney Maslan agreed to grant an extension to allow the hearing to be continued on September 23<sup>rd</sup>. He indicated that it would be helpful to receive questions and comments from other members of the public so that any issues that get raised can be properly addressed prior to the September 23<sup>rd</sup> continuation. No one else chose to speak. The following motion was made: That the Commission continue the Public Hearing regarding this application on September 23, 2003. The motion was made by Mr. Conze, seconded by Mr. Kenny and unanimously approved.

Chairman Damanti read the following two agenda items:

**Flood Damage Prevention Application #196, Land Filling & Regrading Application #103, Friends of Goodwives River, 21 Brushy Hill Road, 32 Oak Crest Road, 4 Rabbit Lane, 6 Overbrook Lane.** Proposing to remove approximately 5,000 cubic yards of sediment from three ponds. A portion of the sediment will be re-used as fill on the four subject parcels. The subject properties are located on the Goodwives River and: at 21 Brushy Hill Road, approximately 1500 feet north of the corner formed by its intersection with Andrews Drive; at 28 Sunset Road, approximately 1500 feet from its intersection with Mansfield Avenue; at 6 Overbrook Lane, approximately 250 feet from its intersection with Rabbit Lane; and at 4 Rabbit Lane, approximately 50 feet from its intersection with Overbrook Lane.

**Coastal Site Plan Review #184, Flood Damage Prevention Application #195, Land Filling & Regrading Application #102, Friends of Goodwives River, 36 and 30 Goodwives River Road, and 11 Queens Lane.** Proposing to repair the Upper Pond Dam, construct a fish ladder, remove approximately 9,000 cubic yards of sediment and restore aquatic and shoreline habitats of the Upper Pond. The subject properties are located on the Goodwives River and: at 36 Goodwives River Road approximately 500 feet north of its intersection with Old Kings Highway South.

Richard Windels spoke on behalf of the Friends of Goodwives River. He was accompanied by Tom De Santos of Fuss & O'Neill, Inc. Mr. Windels explained that the simpler application is the work

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proposed within three upstream ponds along the Goodwives River. The original applications had envisioned dredging the three small ponds and using much of the dredged material as fill in the areas adjacent to the river and the pond. They have been discussing the application with the Environmental Protection Commission, and the Public Hearing by the EPC will be continued on August 6, 2003. The applicant has decided to amend the application so that they will no longer be using the excavated material as fill. Mr. Windels explained that this was necessary because of the detection of low levels of contamination and the high cost of topographic surveys needed for each individual place where fill would be used. He said that it would be easier and better for them to haul away the dredged material rather than try to use it as fill on or near the ponds and river.

The Commission members discussed the situation and noted that the dredging was being thoroughly reviewed by the Environmental Protection Commission and that the public has already had and would continue to have an opportunity to participate in the Public Hearing conducted by the EPC and that since there was no filling or regrading involved, it was not necessary for the Planning and Zoning Commission to issue a permit for Flood Damage Application #196. As long as the applicant obtains the necessary dredging permit from the Environmental Protection Commission, the work can proceed without further review by the Planning and Zoning Commission.

Mr. Windels thanked the Commission for that ruling and proceeded to explain the proposed work on the section of the Goodwives River referred to as the Upper Pond. This pond is immediately upstream from Goodwives River Road and Gorham's Pond. He said that the work is part of the Darien restoration project which has already been partially implemented. In 1993, the town constructed a sedimentation pond at the Town Hall site to catch sediment and other materials coming down Stony Brook. Much of the sediment comes from the sanding of public streets and I-95 interstate highway. He said another aspect of the restoration project has been the installation of load spreaders in the storm drainage system by the Connecticut Department of Transportation. This has occurred just north of the Purple Heart Bridge (where Old Kings Highway South passes underneath I-95 near Corbin Drive). He said that this was already made a noticeable improvement. He said that the pond dredging and restoration of the dam at the Upper Pond has the support of the Friends of Gorham's Pond, the Darien Boat Club, the Noroton Yacht Club, and other organizations. Mr. Windels explained that approximately 43,000 cubic yards of material had to be removed from Darien Harbor at the cost of half a million dollars. He said that the disposal area for this material has been a section of Long Island Sound, but that disposal area may not be available in the future. The cost of transporting the dredged material would therefore increase and might make future dredging much more costly.

Mr. Windels explained that the sediment ponds created in the river had been built to trap sediment and debris before they can flow into larger ponds or into the Darien Harbor. The sediment ponds need routine maintenance and more dredging to continue to function properly. He said that it is much less costly to dredge a small sediment basin than it is to dredge larger bodies of water like Gorham's Pond or the harbor. He said that the dredging and proposed work on the Upper Pond is the result of the sediment build up that has occurred over many years. He said this project is a private project that has been designed to take advantage of many funding sources. One source of funding is municipal funds that have been appropriated for the maintenance of ponds. He said that the Friends of Goodwives River have applied to the state and have also applied for other grants. The Friends of Goodwives River is controlled by a board of directors consisting of ten people that make the decisions.



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Mr. Kenny asked about access to the pond for purposes of getting dredging equipment into and out of the area. Tom De Santos of Fuss & O'Neill explained that there is a 20' wide right-of-way from Goodwives River Road to the dam and pond. He said that parts of this right-of-way may not be useable at this time and would need to be rebuilt before it could be practical. Mr. Windels said that in 1998 the failure of the dam structure caused much of the access roadway from Goodwives River Road to the dam to be washed away and much of the sediment then traveled down to Gorham's Pond. Access for the dredging will be through Queens Lane and the details for the access through private properties is still being worked out with the individual property owners.

Tom De Santos explained that the dredged material will be dewatered or dried out on the embankments adjacent to the pond, and then some of that material will be used as fill around the dam to reduce the width of the dam by approximately 4'. This will cover the area that was previously breached. The change in the site conditions would result in raising the water level in the pond by approximately 1".

Mr. Windels showed an enlarged portion of a 1926 aerial photograph of the Upper Pond. He said that the river has now been reduced to only about a 6' wide swath. They estimate the repairs will be approximately 9,250 cubic yards of sediment in the pond and that they propose to remove this sediment. Some of the dredged material will be used adjacent to the dam and other portions of the dredged materials will be used as fill in the areas adjacent to the pond. Excess material will be hauled away. Mr. Windels produced a letter from the office of Dam Safety of the Connecticut Department of Environmental Protection. This letter indicates that they will not need a permit from the Dam Safety Division of DEP to undertake the work adjacent to the dam. Mr. Windels also noted that they would be installing a fish ladder to allow fish to travel upstream around the dam. He said that there is approximately a 9' drop from the water level of the Upper Pond to the water level of Gorham's Pond. The fish ladder will allow the fish to move upstream to spawn in the Upper Pond.

Tom De Santos said that several hundred cubic yards of dredged fill material would be used near the west bank and several hundred more yards will be used near the dam. He said that the estimates of the amount of dredged material vary due to the difficulty in precise measurement of the depth of sediment, but all of the calculations indicate that there will be approximately 9,250 cubic yards. He said that they will be taking away a lot more dredged material than they will be using in the vicinity.

In response to questions, Mr. Windels said that they hope to start work at the uppermost Small Pond in August of 2003. They plan to work through the fall and dredge the ponds starting with the uppermost pond and working their way toward the lowest portions of the Goodwives River. It might be necessary to delay the dredging of the largest pond (the Upper Pond adjacent to Goodwives River Road) until next year. Mr. Windels said that it has been a very complex process and that he was willing to share his experience and knowledge with any other groups wishing to perform similar river maintenance projects.

Mr. Kenny asked who is participating, who is not participating and why. Mr. Windels said that all of the property owners adjacent to the river were invited to participate and most of those property owners have been supportive. He said the one exception was the Hart family that owns property on the east side of the Upper Pond. He said that they have objected to any work taking place on their

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property. Mr. Windels said the plans have been and will be modified so that no work is to take place on the Hart property.

Mr. Kenny asked which work permits have been obtained and what permits still need to be obtained. Mr. Windels said that the permit application to the Environmental Protection Commission is still pending and that they also need to obtain approval from the Army Corps of Engineers. He said that they hope to apply soon to the Connecticut Department of Environmental Protection for the necessary permits under the Water Quality Program, the Tidal Zone Jurisdiction and the Water Diversion Program. Mr. Windels said that the work proposed is to implement the DEP's 1986 Management Plan. For that reason, the plan is strongly supported by the DEP Officials and the fact that it is a consolidated application for several ponds makes it much easier for the DEP to process. Mr. Kenny asked about liability insurance and/or bonds for work completion. Mr. De Santos said that the Connecticut Department of Environmental Protection does not typically require bonds for completion of work. Mr. Ginsberg indicated that the Environmental Protection Commission might require a bond(s) to insure that the sediment and erosion controls are properly installed and maintained.

In response to questions, Mr. Windels said that his organization has already made its \$185,000 goal and that some people have agreed to contribute substantial funds once all of the permits have been obtained and when the dredging is actually ready to commence. He said that they will not start work on a pond unless they have all the money necessary to complete the dredging and restoration work of that pond. He said that once some dredging starts other people will contribute money because they want to see their money used for the implementation of the program rather than for soft costs such as surveying, engineering design and permit application fees. Mr. Windels said that he hopes to have the project completed within two or three years.

Director of Planning Jeremy Ginsberg reviewed the report from the Connecticut Department of Environmental Protection concerning other permits that are necessary.

Attorney Robert Maslan had submitted a letter dated January 22, 2003. Mr. Windels said that the first issue raised in Mr. Maslan's letter was the question of whether the Friends of Goodwives River have legal standing to make an application. He said that the Friends of Goodwives River is a model used by many organizations and that the Friends have been recognized by the State of Connecticut for grant application purposes. He said that they have sent letters from property owners involved in the proposed work. The Commission members noted that it would be good to get an opinion from Town Counsel about the issues raised in Mr. Maslan's letter. Mr. Ginsberg will work on getting that material to the town attorney and getting a response. Mr. Windels said that the second issue raised by Mr. Maslan is the property line question adjacent to the Hart property on the east side of the Upper Pond. He said that the land surveyors have already been engaged to work on that question to make sure that they clearly mark out the property line so that no dredging work will take place on the Hart property.

Mr. Windels said that the third issue raised in Mr. Maslan's letter is the impact of the proposed work on the base flood elevation in the pond. He said that that matter is being worked on and will be discussed by the Environmental Protection Commission. Another issue raised in the letter is the future maintenance of the pond and dam structures. Mr. Windels said that they are trying to undertake the long deferred maintenance of the pond and dam, and that no permanent maintenance

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program has yet been devised. He said that they are fixing the situation now and are working on possibilities for long-term maintenance.

Mr. Windels said that another issue raised in Mr. Maslan's letter is the question of environmental impact. Mr. Windels said that Fuss & O'Neill have submitted a very detailed report with plans and studies and that the impacts to the water system are all positive. Another issue raised from the Maslan letter is a question of public access. Mr. Windels said that there are no points of public access to the Upper Pond and that providing general public access through private properties is not a likelihood. He said that schools, the Nature Center, and other groups can request permission from individual property owners to access the river and/or pond at various points, but that permission would be subject to action by the individual property owners.

There was some discussion regarding the issues raised in Mr. Maslan's letter and the need to get a legal opinion regarding those issues. There was also the need to provide more detailed information about the specific engineering of the project to dredge the Upper Pond and to use some of the dredge material as fill in the areas adjacent to the pond. The Commission members agreed that it would be best to continue the Public Hearing and the next available date to continue the hearing is September 23, 2003. Mr. Windels then granted an extension of time so that the Commission could continue the Public Hearing on September 23rd.

The following motion was made: That the Planning and Zoning Commission continue the Public Hearing regarding this application on September 23, 2003. The motion was made by Mr. Kenny, seconded by Mr. Conze and unanimously approved. There were no comments from the public regarding the application.

Chairman Damanti read the following agenda item:

**Land Filling & Regrading Application #100, Daniel Lovegrove, 174 West Avenue.** Proposing to regrade in order to modify the existing driveway on West Avenue, create a new curb cut, create additional off street parking and perform related site development activities. The subject property is located on the north side of West Avenue approximately 500 feet east of its intersection with Herman Avenue and is shown on Tax Assessor's Map #20 as Lot #12, SB & R-1/3 Zones.

Architect Robert Young represented the applicant and explained that the subject property is located across West Avenue from the Rings End Lumber Company. There is a sidewalk across the front of the property and the sidewalk is frequently used by pedestrians and bicyclists. There is a steep driveway leading from West Avenue up to the rear of the property. Hedges have been placed to the east of the driveway by an adjacent property owner. Mr. Lovegrove worked with the adjacent owner to remove the old hedges which created a safety hazard because they blocked the view of motorists coming out of the driveway. Mr. Lovegrove paid for the replacement of those hedges with smaller, more compact evergreens.

Mr. Young said that the steep driveway is often very slippery and dangerous. The proposal is to create a parking area on the lower level, adjacent to the sidewalk, so that it could be used when weather conditions prohibit the use of the steep driveway to the rear of the property. The option that they prefer is to create an additional curb cut on the westerly portion of the property so that there would be a half circle driveway in the front portion of the site. Mr. Young explained that there was

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some difficulty creating the second curb cut due to the existing policy of the Public Works Department to keep such curb cuts at least fifty feet apart.

Mr. Young reviewed the revised plan which calls for a hammerhead parking area/turn around area in the front yard. This plan does not call for a second curb cut, but it does have the problem of leaving the existing flared end of the existing driveway in front of the neighboring property to the east. Mr. Young then reviewed the third version of the plot plan which would have a hammerhead or parking space in the front yard and would also relocate the easterly edge of the driveway so that it would be farther away from the Kelly property (which is located to the east) and the flared end portion of the driveway would not go in front of the Kelly property. Mr. Young said that they definitely prefer the plan with a modified flared end of the driveway to avoid the Kelly property.

It was noted that the building is in the residential zone and is used for residential purposes. The Commission members agreed that the plan with the second curb cut seemed to make the most sense and they asked the Director of Planning Jeremy Ginsberg if he could discuss the matter with the Public Works Department. Architect Robert Young said that he could modify the design somewhat so that he could maximize the distance between the existing curb cut and the proposed curb cut.

There were no comments from the public regarding the application. The following motion was made: That the Commission close the Public Hearing regarding this application. The motion was made by Mr. Conze, seconded by Mr. Kenny and unanimously approved.

Chairman Damanti read the following agenda item:

**Land Filling & Regrading Application #101, Leigh Kosnik, 54 Leeuwarden Road.** Proposing to fill and regrade as part of the installation of a new garage, modify the existing driveway and perform related site development activities. The subject property is on the west side of Leeuwarden Road approximately 500 feet north of its intersection with Leeuwarden Lane, and is shown on Tax Assessor's Map #29, as Lot #111 in the R-2 Zone.

Rich Kosnik and Landscape Architect Rob Sherwood were present to discuss the application. Mr. Kosnik showed the plans of the current residence and the proposed driveway extension leading up to the garage. Mr. Sherwood distributed a revised landscape plan dated July 21, 2003. This plan showed water flowing to the new catch basin and dry wells proposed. Belgian block curb is shown as being part of the plan. Mr. Sherwood explained that there will be less impervious surface in the new proposal than in the existing driveway. There will be some grading on the side of the three-car garage. The Kosniks have proposed evergreen screening in order to solidly screen the new driveway. This will be in the form of seven spruce (either Norway or Colorado spruce) 8 to 9' in height, 10' off center, or fifteen arborvitae 8 feet to 9 feet high. These trees will be placed along the driveway hammerhead.

Mr. Spain then asked about the drainage and how the water will flow. Attorney Robert F. Maslan, Jr. then spoke on behalf of the adjacent property owners, the Nightingales. The Nightingales live on Leeuwarden Road and are the property closest to the new driveway. They are the most effected neighbor. Mr. Maslan explained that an agreement was reached between the Kosniks and the Nightingales regarding screening along the shared property line. He submitted a copy of the

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informal agreement regarding screening for the record. There being no other comments from the Commission or the general public, the Public Hearing on this matter was then closed at 11:10 p.m.

**GENERAL MEETING**

IN ATTENDANCE AT THE GENERAL MEETING:

Damanti, Spain, Bigelow, Conze, Kenny, Forman

STAFF ATTENDING: Ginsberg, Keating

Chairman Damanti read the following agenda item:

*Discussion, deliberation, and possible decisions regarding the following:*

**Flood Damage Prevention Application #193, Anthony & Cynthia Lazzara, 184 Nearwater Lane.**

Proposing to raze the existing residence, construct a new residence, and perform related site development activities within a regulated area. The subject property is located on the east side of Nearwater Lane approximately 325 feet south of its intersection with Shipway Road, and is shown on Tax Assessor's Map #55 as Lot #5, in the R-1 Zone. *DECISION DEADLINE: SEPTEMBER 11, 2003.*

The following motion was made: That the Commission waive the process of reading the entire resolution aloud because each member has received a copy of the adopted resolution in advance of the meeting and has had an opportunity to review it prior to the meeting. The motion was made by Mr. Bigelow, seconded by Mr. Kenny and unanimously approved.

After a brief discussion, the following motion was made: That the Commission adopt the following resolution to approve the project:

**PLANNING AND ZONING COMMISSION  
ADOPTED RESOLUTION  
July 22, 2003**

Application Number: Flood Damage Prevention Application #193

Subject Property: 184 Nearwater Lane  
Tax Assessor's Map #55 Lot #5

Name and Address of Property Owner: Anthony & Cynthia Lazzara  
84 Hecker Avenue  
Darien, CT 06820

Name and Address of Applicant and:  
Applicant's Representative: Wilder G. Gleason, Esq.  
Gleason, Hill and Ambrette, LLC  
23 Old King's Highway South  
Darien, CT 06820

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Activity Being Applied For: Proposing to raze the existing residence, construct a new residence, and perform related site development activities within a regulated area.

Property Location: The subject property is located on the east side of Nearwater Lane approximately 325 feet south of its intersection with Shipway Road.

Zone: R-1

Date of Public Hearing: May 27, 2003 continued to June 24, 2003 continued to July 8, 2003

Time and Place: 8:00 P.M.      Room 206 and Auditorium      Town Hall

Publication of Hearing Notices

Dates: May 15 & 22, 2003  
June 12 & 19, 2003

Newspaper: Darien News-Review

Date of Action: July 22, 2003

Action: GRANTED WITH STIPULATIONS

Scheduled Date of Publication of Action:  
July 31, 2003

Newspaper: Darien News-Review

The Commission has conducted its review and findings on the bases that:

- the proposed use and activities must comply with all provisions of Sections 400 and 820 of the Darien Zoning Regulations for the Commission to approve this project.
- the size, nature, and intensity of the proposed use and activities are described in detail in the application, the submitted development plans, and the statements of the applicant whose testimony is contained in the record of the public hearing, all of which material is incorporated by reference.
- each member of the Commission voting on this matter is personally acquainted with the site and its immediate environs.

Following careful review of the submitted application materials and related analyses, the Commission finds:

1. This application is a Flood Damage Prevention application under Section 820 of the Darien Zoning Regulations to demolish and remove the existing single-family residence and construct a new single-family residence on the property. The proposed house location is in a flood hazard zone with flood waters expected 11 feet above sea level. The proposed first floor will be 13 feet above sea level. There will be no basement.
2. The Zoning Board of Appeals recently granted the necessary variances for this construction as part of Calendar No. 60-2003 on July 2, 2003. That approval is hereby incorporated by reference.

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3. The Commission hereby finds that the proposal is exempt under the Coastal Area Management Act (Section 810 of the Darien Zoning Regulations) because of the location of the proposed activity and because the activity will not have any impacts upon coastal resources.
4. In accordance with the revised engineering information submitted June 24, 2003, the proposed activity will have no adverse impacts on flooding on adjacent properties because the runoff water from the roof will be directed into a new storm water detention system to be built under the proposed patio and there will be no regrading of the site. The detention system will consist of trap rock and other porous materiel at least two feet deep under the large terrace. It will serve as a large drywell. No regrading of the site is shown on the plans and none is authorized. All mechanical equipment is to be located above the expected flood level and the proposed house has been designed to withstand flood forces. Therefore, this proposal is consistent with the need to minimize flood damage.
5. The Commission has considered all evidence offered at the Public Hearing regarding the character and extent of the proposed activities, the land involved, the possible effects of the activities on the subject property and on the surrounding areas, and the suitability of such actions to the area for which it is proposed.

NOW THEREFORE BE IT RESOLVED that Flood Damage Prevention Application #193 is hereby modified and granted subject to the foregoing and following stipulations, modifications and understandings:

- A. Construction shall be in accordance with the plans approved by the Zoning Board of Appeals and entitled:
  - Zoning Location Survey prepared for Anthony A. Lazzara Cynthia MM Lazzara, #184 Nearwater Lane, scale 1"=20', by William W. Seymour & Associates, last revised June 5, 2003.
  - Lazzara Residence 184 Nearwater Lane, dated 04.10.03/6-20-03 by Studio for Architecture, Sheet #A1, #A2.
- B. Accompanying the Zoning and Building Permit applications and prior to commencing construction of the house, more detailed drawings of the foundation design shall be submitted along with certification from a licensed architect and/or engineer, that verifies that the final design complies with the applicable requirements.
- C. No filling or regrading of the site has been requested or shown on the submitted plans. No regrading is authorized. The architectural plans assume a finished grade of elevation 9 around the entire building. This does not coincide with the spot elevations on the survey map. The architectural plans need to be adjusted to match the actual ground elevations and this may result in the need to adjust the roof pitch to comply with the 30 foot maximum allowed building height.
- D. During construction, the applicant shall utilize the sediment and erosion controls illustrated on the plans (in the superseded drainage report) and any additional measures as may be necessary due to site conditions. These sediment and erosion controls shall be installed and

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maintained to minimize any adverse impacts during the construction and until the area has been revegetated or restabilized. The Planning and Zoning Department shall be notified prior to commencement of work and after the sedimentation and erosion controls are in place. The staff will inspect the erosion controls to make sure that they are sufficient and are as per the approved plans. All erosion control measures must be maintained until the disturbed areas are stabilized.

- E. Once the foundation of the structure has been installed, the applicant shall submit an 'as-built' survey to verify compliance with the setback requirements and minimum floor elevation requirements of the regulations and this approval. Once the structure is built, and prior to the request for a Certificate of Zoning Compliance, the applicant shall submit verification from the project engineer that all aspects of the building construction, drainage system and site work, have been completed in compliance with the approved plans and the flood damage prevention regulations.
- F. The granting of this Permit does not relieve the applicant of responsibility of complying with all applicable rules, regulations, and codes of other Town, State, or other regulating agencies.
- G. In evaluating this application, the Planning and Zoning Commission has relied on information provided by the applicant. If such information subsequently proves to be false, deceptive, incomplete and/or inaccurate, the Commission reserves the right, after notice and hearing, to modify, suspend, or revoke the permit as it deems appropriate.
- H. This permit shall be subject to the provisions of Section 829 f of the Darien Zoning Regulations, including but not limited to, submission of certification that the work has been completed in conformance with the permit, and implementation of the approved plan within one year of this action (July 21, 2004). This may be extended as per Section 829f.

All provisions and details of the plan, as approved, shall be binding conditions of this action and such approval shall become final upon compliance with these stipulations and the signing of the final documents by the Chairman. All completed requirements and materials shall be submitted to the Planning and Zoning Department within 60 days of this action or this approval shall become null and void.

The motion was made by Mr. Bigelow and seconded by Mr. Spain. Voting in favor of the motion were Mr. Damanti, Bigelow, Spain, Kenny, and Mrs. Forman. Mr. Conze abstained from voting because he had not attended the Public Hearing. The motion was passed by a vote of 5 to 0, with one abstention.

Chairman Damanti read the following agenda item:

**Land Filling & Regrading Application #92-A, Nancy C. Hooper, 51 Old Farm Road.** Proposing to install a swimming pool and to place fill and regrade a portion of the property and perform related site development activities. The subject property is on the west side of Old Farm Road, approximately 250 feet north of its intersection with Searles Road, and is shown on Tax Assessor's Map #66, as Lot #97, in the R-1/2 Zone. *DECISION DEADLINE: AUGUST 28, 2003.*



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The following motion was made: That the Commission waive the process of reading the entire resolution aloud because each member has received the draft resolution prior to the meeting and has had an opportunity to review the draft prior to the meeting. The motion was made by Mr. Spain, seconded by Mrs. Forman and unanimously approved. The following motion was made: That the Commission adopt the following resolution to deny the application:

**PLANNING AND ZONING COMMISSION  
ADOPTED RESOLUTION  
July 22, 2003**

Application Number: Land Filling and Regrading Application #92-A

Tax Assessor's Map #66 Lot #97

Name and Address of Property Owner: Nancy C. Hooper  
And Applicant: 51 Old Farm Road  
Darien, CT 06820

Name and Address of Applicant Wilder G. Gleason, Esq.  
And Applicant's Representative: Gleason Hill & Ambrette, LLC  
23 Old King's Highway South  
Darien, CT 06820

Activity Being Applied For: Proposing to install a swimming pool and to place fill and regrade a portion of the property and perform related site development activities.

Property Location: The subject property is on the west side of Old Farm Road, approximately 250 feet north of its intersection with Searles Road.

Zone: R-1/2

Date of Public Hearing: June 24, 2003

Time and Place: 8:00 P.M. Auditorium Town Hall

Publication of Hearing Notices

Dates: June 12 & 19, 2003

Newspaper: Darien News-Review

Date of Action: July 22, 2003

Action: DENIED

Scheduled Date of Publication of Action:  
July 31, 2003

Newspaper: Darien News-Review

The Commission has conducted its review and findings on the bases that:

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- the proposed activities must comply with all provisions of Sections 400, 850 and 1000 of the Darien Zoning Regulations for the Commission to approve this project.
- the size, nature, and intensity of the proposed activities are described in detail in the application, the submitted plans, and the statements of the applicant whose testimony is contained in the record of the public hearing, all of which material is incorporated by reference.
- each member of the Commission voting on this matter is personally acquainted with the site and its immediate environs.

Following careful review of the submitted application materials and related analyses, the Commission finds:

1. The proposal is to install a swimming pool and to place fill and regrade a portion of the property and perform related site development activities.
2. The applicant submitted a variance request to the Zoning Board of Appeals (ZBA) in Calendar No. 5-2003. That request was to locate a swimming pool in the same general location as shown in this application. That request was denied on February 12, 2003.
3. After the ZBA's decision, the applicant then realized that there was an inaccurate line on the current Town Zoning Map. The GIS-computer generated zoning map adopted in 1999 by the Planning & Zoning Commission had inadvertently modified a zone boundary line between the R-1/2 and R-1 zones in the Five Mile River Road/Old Farm Road area in and around the subject property.
4. On or about April 17, 2003, an application was submitted to the Planning & Zoning Commission to fill and regrade within fifteen feet of the property line on the subject property in conjunction with the construction of a swimming pool. The applicant, via letter dated April 28, 2003, requested that the public hearing on the application be held on June 24, 2003, and consented to any necessary extensions to allow that to occur.
5. On or about May 16, 2003, the Darien Planning and Zoning Commission prepared an application to correct/readopt the existing zoning line between the R-1/2 and R-1 zones in the Five Mile River Road/Old Farm Road area.
6. The applicant's property, as shown on the GIS-computer generated Town Zoning Map which is now in effect, is now partly in the R-1/2 Zone, with the rear portion (where the proposed pool is to be located) in the R-1 zone.
7. During the June 24, 2003 public hearing on the subject application, it was acknowledged that the swimming pool as proposed by the applicant is located within the R-1 Zoning District as shown on the Town Zoning Map now in effect. However, the pool does not conform to the R-1 side yard and rear yard setbacks of 25 and 40 feet respectively. The applicant acknowledged that the existing Zoning Map was incorrect in this area, and was the subject of a separate application to correct that zone boundary and readopt the Zoning Map. If the zone line was

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corrected to be coincident with the Hooper rear property line, the swimming pool would then be in the R-1/2 zone, and would comply with the setback requirements for the R-1/2 Zone.

8. The Commission decided the zone line correction/readoption application on July 8, 2003. They corrected the R-1/2 zone line to be 300 feet from edge of Five Mile River Road/Old Farm Road rather than to be coincident with the Hooper rear property line. That action to correct/readopt the Zoning Map takes effect on July 27, 2003 at twelve noon.
9. Effective July 27, 2003, more of the applicant's subject property will be in the R-1/2 Zone, however the rear portion of the property (the western-most part of the property) where the proposed swimming pool is to be located will still be in the R-1 zone.
10. The setbacks in the R-1 zone as noted in Section 406 of the Darien Zoning Regulations are 40 foot front yard, 25 foot side yard, and 40 foot rear yard. The proposed swimming pool is shown on the submitted Zoning Location Survey plan is 12.5 (twelve and a half) feet from the side property line and eighteen (18) feet from the rear property line.
11. The proposed swimming pool, as shown on the submitted plans entitled, " Zoning Location Survey of #51 Old Farm Road prepared for Nancy C. Hooper", by William W. Seymour & Associates, with proposed elements added May 14, 2003, does not meet the 25 foot side and the 40 foot rear yard setbacks for the R-1 Zone. The regrading of the property is integrated into the pool design. If the pool cannot be installed in the location shown on the plans, then the regrading close to the property lines is not necessary or appropriate. Thus, the Planning and Zoning Commission cannot approve the submitted plans, as they do not comply with the Darien Zoning Regulations.

NOW THEREFORE BE IT RESOLVED that Land Filling Application #92-A is hereby denied.

The motion was made by Mr. Bigelow and seconded by Mrs. Forman. Voting in favor of the motion were Mr. Damanti, Spain, Bigelow, Kenny, and Mrs. Forman. Mr. Conze abstained because he had not attended the Public Hearing. The motion to adopt the resolution and to deny the application was passed by a vote of 5 to 0, with one abstention.

Chairman Damanti read the following agenda item:

**Special Permit Application #203-A, Aux Delices, Inc., 25 Old King's Highway North.** Proposing to establish a convenience food store and caterer with both indoor and seasonal outdoor seating in a 1,350 square foot space within the Goodwives Shopping Center. The following motion was made: To adopt the following resolution to approve the application:

**PLANNING AND ZONING COMMISSION  
ADOPTED RESOLUTION  
July 22, 2003**

Application Number: Special Permit Application #203-A

Street Address: 25 Old King's Highway North

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Tax Assessor's Map #71 Lot #19

Name and Address of Proposed Tenant: Aux Delices, Inc.  
1075 East Putnam Avenue  
Riverside, CT 06878

Name and Address of Applicant: Wilder G. Gleason, Esq.  
And Applicant's Representative: Gleason Hill & Ambrette  
23 Old King's Highway South  
Darien, CT 06820

Name and Address of Property Owner: Urstadt-Biddle Properties  
321 Railroad Avenue  
Greenwich, CT 06830

Activity Being Applied For: Proposing to establish a retail store with convenience food items available for take out and/or consumption at both indoor and seasonal outdoor seating and establishing a catering service within a 1,350 square foot space within the Goodwives Shopping Center.

Property Location: The subject property is on the south side of Old King's Highway North, approximately 150 feet southwest of its intersection with Brookside Road.

Zone: DC Zone

Date of Public Hearing: July 22, 2003

Time and Place: 8:00 P.M. Room 206 Town Hall

Publication of Hearing Notices

Dates: July 10, 2003  
July 17, 2003

Newspaper: Darien News-Review

Date of Action: July 22, 2003

Action: GRANTED WITH STIPULATIONS

Scheduled Date of Publication of Action:  
July 31, 2003

Newspaper: Darien News-Review

The Commission has conducted its review and findings on the bases that:

- the proposed use and activities must comply with all provisions of Sections 630 and 1000 of the Darien Zoning Regulations for the Commission to approve this project.
- the size, nature, and intensity of the proposed use and activities are described in detail in the application, the submitted development plans, and the statements of the applicant whose testimony is contained in the record of the public hearing, all of which material is incorporated by reference.

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- each member of the Commission voting on this matter is personally acquainted with the site and its immediate environs.

Following careful review of the submitted application materials and related analyses, the Commission finds:

1. As noted at the public hearing by the applicant, the proposal is for a catering service that also sells specialty prepared foods. The business will be located in a 1,350 square foot space within the Goodwives Shopping Center at 25 Old King's Highway North. This is about half of the space formerly occupied by the Darien Bootery. The other half of this space is now KaBloom florist shop.
2. The business will have no kitchen, only a minimal food preparation on-site. This food preparation will include warming soup, making coffee, and preparing sandwiches and salads. All catering and event planning will be done and delivered out of Stamford.
3. The applicant has requested a maximum of eight seats for the business. Some of those seats will be inside, and the balance (up to four seats and two tables), will be outside on a seasonal basis.
4. The proposed hours of operation will be a maximum of 7:30am to 7:30pm, seven days a week.
5. Approval from the Architectural Review Board was received for the proposed sign on July 15, 2003.
6. It was noted by the applicant at the public hearing on this matter that the business is expected to have two or three deliveries per day via large trucks. Those deliveries will occur in the rear of the building.
7. As part of previous applications for the Goodwives Shopping Center, the Planning and Zoning Commission made a finding under Section 904 of the Darien Zoning Regulations that although according to the Darien Zoning Regulations, the shopping center would require about 500 more parking spaces, but due to the unique nature of the Goodwives Shopping Center, the parking is adequate. Because of the minimal impact on parking created by this business, the Commission finds that no increase in parking spaces would be necessary.

NOW THEREFORE BE IT RESOLVED that Special Permit Application #203-A is hereby modified and granted subject to the foregoing and following stipulations, modifications and understandings:

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- A. The applicant shall work with the Fire Marshal, Sewer Services and the Darien Health Department for all necessary permits and approvals. The applicant may need to install a grease trap. Disposal of waste and trash must be in a clean and sanitary manner.
- B. The hours of operation shall be as noted in #4, above—a maximum of 7:30 a.m. to 7:30 p.m., seven days a week. If there is any proposed expansion of hours for the business, the applicant shall return to the Planning and Zoning Commission for its review and action.
- C. Necessary precautions shall be taken by the operator(s) of the Aux Delices business to minimize and/or eliminate smell and odor from being exhausted from the facility because uncontrolled smell or odor would negatively affect the adjacent businesses. If required by the Health Department or the Fire Marshal, a vent system may need to be installed.
- D. The Commission hereby approves up to two tables, four chairs (or two chairs and a bench) and one trash container to be placed outside in front of the business on a seasonal basis (April 1<sup>st</sup> to October 1<sup>st</sup>). However, when outdoor seating/dining is in use, a similar number of indoor seats shall be taken out of use, such that the total seats in use at any one time shall be a maximum of eight. The outdoor tables, chairs, and/or bench and trash container shall be placed only along the frontage of the Aux Delices, and only on the brick portion of the sidewalk. The concrete area of the Goodwives Shopping Center sidewalk shall remain free and unobstructed at all times for pedestrian access. The applicant shall work with the Darien Fire Marshal to ensure that adequate clearance for restaurant egress is provided. There will be no table service outside. Approval of the landlord is required prior to placing seats and tables on the sidewalk. The applicant shall provide a copy of the landlord's approval to the Commission so that the file will be complete.
- E. In evaluating this application, the Planning and Zoning Commission has relied on information provided by the applicant. If such information subsequently proves to be false, deceptive, incomplete and/or inaccurate, the Commission reserves the right, after notice and hearing, to modify, suspend, or revoke the permit as it deems appropriate.
- F. The granting of this Special Permit does not relieve the applicant of responsibility of complying with all applicable rules, regulations, and codes of other Town, State, or other regulating agencies.
- G. This permit shall be subject to the provisions of Section 1028 of the Darien Zoning Regulations, including but not limited to, implementation of the approved plan within one year of this action (July 21, 2004). This may be extended as per Section 1028.

All provisions and details of the plan shall be binding conditions of this action and such approval shall become final upon compliance with these stipulations and the signing of the final documents by the Chairman. A Special Permit form shall be filed in the Darien Land Records within 60 days of this action or this approval shall become null and void.

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The motion was made by Mrs. Forman, seconded by Mr. Spain. All voted for the motion except Mr. Bigelow, who abstained because he was not present for the Public Hearing. The motion passed by a vote of 5-0 with one abstention.

Chairman Damanti read the following agenda item:

**Amendment of Business Site Plan #135, Crystal Gardens, 934 Boston Post Road.** Proposing to amend previous approval to allow up to six employees on-site at any one time.

The following motion was made: That the Commission approve the requested amendment to allow up to six workers on-site at any one time. They instructed Mr. Ginsberg to send a letter to the applicant noting this amendment to the previous approval of Crystal Gardens.

The motion was made by Mrs. Forman, and seconded by Mr. Kenny. The motion passed by a vote of 5-0, with one abstention (Mr. Bigelow did not vote because he was not at the Public Hearing).

Chairman Damanti read the following agenda item:

**Land Filling & Regrading Application #100, Daniel Lovegrove, 174 West Avenue.** Proposing to regrade in order to modify the existing driveway on West Avenue, create a new curb cut, create additional off street parking and perform related site development activities.

The following motion was made: That the Commission adopt the following resolution to approve the project with the recommendation that there be two curb cuts on the property, but with the understanding that there may only be one curb cut if the second curb cut is not permitted by the Public Works Department:

**PLANNING AND ZONING COMMISSION  
ADOPTED RESOLUTION  
July 22, 2003**

Application Number: Land Filling and Regrading Application #100

Tax Assessor's Map #20 Lot #12

Name and Address of Property Owner: Daniel Lovegrove  
174 West Avenue  
Darien, CT 06820

Name and Address of Applicant and:  
Applicant's Representative: Robert Young  
Robert Young Assoc.  
PO Box 1721  
Darien, CT 06820

Activity Being Applied For: Proposing to regrade in order to modify the existing driveway on West Avenue, create a new curb cut, create additional off street parking and perform related site development activities.

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Property Location: The subject property is located on the north side of West Avenue approximately 500 feet east of its intersection with Herman Avenue.

Zone: SB & R-1/3 Zones

Date of Public Hearing: July 22, 2003

Time and Place: 8:00 P.M. Room 206 Town Hall

Publication of Hearing Notices

Dates: July 10 & 17, 2003

Newspaper: Darien News-Review

Date of Action: July 22, 2003

Action: APPROVED WITH CONDITIONS

Scheduled Date of Publication of Action:  
July 31, 2003

Newspaper: Darien News-Review

The Commission has conducted its review and findings on the bases that:

- the proposed activities must comply with all provisions of Sections 400, 850 and 1000 of the Darien Zoning Regulations for the Commission to approve this project.
- the size, nature, and intensity of the proposed activities are described in detail in the application, the submitted plans, and the statements of the applicant whose testimony is contained in the record of the public hearing, all of which material is incorporated by reference.
- each member of the Commission voting on this matter is personally acquainted with the site and its immediate environs.

Following careful review of the submitted application materials and related analyses, the Commission finds:

1. The proposal is to regrade in order to modify the existing driveway on West Avenue, create a new curb cut, and create additional off street parking. The existing driveway is steep, and often dangerous and slippery during inclement weather. This application will provide for a temporary parking area in front of the house during such times, and providing easier access to the residence for delivery vehicles. The application will also remedy the fact that a portion of the existing driveway is on the adjacent Kelly property to the east.
2. Three separate plans were prepared by the applicant, and described and presented to the Commission at the public hearing.
  - The first plan, *Driveway, Grading and Plot Plan by Robert E. Young Associates, scale 1"=8', Drawing Number: PZ1, Drawing Date: June 11, 2003*, shows two curb cuts on West Avenue (including a new "estate" or half circle driveway) and a flare out of the other



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driveway in front of the adjacent Kelly property to the east. The centerlines of the two driveways are approximately 40 feet away from each other.

- The second plan, *Driveway, Grading and Plot Plan by Robert E. Young Associates, scale 1"=8', Drawing Number: PZ-2 dated July 18, 2003*, shows one curb cut on West Avenue, a new hammerhead (a parking area or turn around area that would be west of and perpendicular to the main driveway), no second curb cut on West Avenue, and a flare out for the driveway in front of the adjacent Kelly property. This plan also shows drainage improvements (a concrete drywell and trench drain) on site.
- The third plan, *Driveway, Grading and Plot Plan by Robert E. Young Associates, scale 1"=8', Drawing Number: PZ-3 dated July 22, 2003* shows one curb cut on West Avenue, a new hammerhead, no second curb cut on West Avenue, with the flare out for the driveway entirely in front of the Lovegrove driveway.

The third plan was prepared in response to an email sent by the Public Works Department commenting on the second plan.

3. The various site plan designs have been reviewed by the Commission and each of them is in general compliance with the intent and purposes of Section 1000.
4. The proposal conforms to the standards for approval as specified in Section 1005 (a) through (g) of the Darien Zoning Regulations.

NOW THEREFORE BE IT RESOLVED that Land Filling Application #100 is hereby approved subject to the foregoing and following stipulations, modifications and understandings:

- A. The filling and regrading shall be in accordance with the following plans submitted to the Commission, as required to be modified herein:

- Driveway, Grading and Plot Plan by Robert E. Young Associates, scale 1"=8', Drawing Date: June 11, 2003, Drawing Number: PZ-1. **AND**
- Driveway, Grading and Plot Plan by Robert E. Young Associates, scale 1"=8', Drawing Date: July 18, 2003, Drawing Number: PZ-3.

The Commission notes that the ideal plan would be a "hybrid" of the first plan, Drawing Number: PZ-1 dated June 11, 2003 having two curb cuts, and the third plan Drawing Number: PZ-3 dated July 22, 2003 relative to the flare out for the driveway entirely in front of the Lovegrove driveway. It was noted that the applicant may be able to modify the plan slightly by moving the new driveway on West Avenue further to the west, thereby increasing the distance between the two driveways. The applicant is hereby directed to work with the Public Works Department relative to the establishment of a second curb cut on West Avenue. If Public Works will not approve a second curb cut, then Drawing Number PZ-3 is hereby approved. If Public Works approves a "hybrid" plan, that plan will be signed by the Chairman as the final, approved plan. The applicant shall also work with the Public Works Department on any necessary drainage improvements required for this project. The applicant shall be responsible for the installation of the drainage improvements.

- B. The Commission believes that providing a second curb cut on West Avenue for this property is warranted for a number of reasons: 1) this is a residential property in a commercial zone, and the amount of traffic coming to this property is limited; 2) the second curb cut may eliminate some backing up of vehicles onto West Avenue; and 3) the unusual topography of the site.

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- C. Due to the minor nature of the project, the provision of a Performance Bond is hereby waived.
- D. During construction, the applicant shall utilize any additional sediment and erosion measures as may be necessary due to site conditions. Those sediment and erosion controls shall be installed to minimize any adverse impacts during the construction and until the area has been revegetated or restablilized. The Planning and Zoning Department shall be notified prior to commencement of work and after the sedimentation and erosion controls are in place. The staff will inspect the erosion controls to make sure that they are sufficient and are as per the approved plans. All erosion control measures must be maintained until the disturbed areas are stabilized.
- E. In evaluating this application, the Planning and Zoning Commission has relied on information provided by the applicant. If such information subsequently proves to be false, deceptive, incomplete and/or inaccurate, the Commission reserves the right, after notice and hearing, to modify, suspend, or revoke the permit as it deems appropriate.
- F. The granting of this approval does not relieve the applicant of the responsibility of complying with all other applicable rules, regulations and codes of the Town, State, or other regulating agency. This includes final street opening approval from the Darien Public Works Department.
- G. This permit shall be subject to the provisions of Section 858 of the Darien Zoning Regulations, including but not limited to, implementation and completion of the approved plan within one (1) year of this action (July 21, 2004). This may be extended as per Section 858.

All provisions and details of the plan shall be binding conditions of this action and such approval shall become final upon compliance with these stipulations and the signing of the final documents by the Chairman. A Special Permit form shall be filed in the Darien Land Records within 60 days of this action or this approval shall become null and void.

The motion was made by Mrs. Forman, seconded by Mr. Bigelow and unanimously approved.

Chairman Damanti read the following agenda item:

**Land Filling & Regrading Application #101, Leigh Kosnik, 54 Leeuwarden Road.** Proposing to fill and regrade as part of the installation of a new garage, modify the existing driveway and perform related site development activities.

The following motion was made: That the Commission adopt the following resolution to approve the project with conditions and stipulations:

**PLANNING AND ZONING COMMISSION  
ADOPTED RESOLUTION  
July 22, 2003**

Application Number: Land Filling and Regrading Application #101

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Tax Assessor's Map #29 Lot #111

Name and Address of Property Owner: Leigh Kosnik  
54 Leeuwarden Road  
Darien, CT 06820

Activity Being Applied For: Proposing to fill and regrade as part of the installation of a new garage, modify the existing driveway and perform related site development activities.

Property Location: The subject property is on the west side of Leeuwarden Road approximately 500 feet north of its intersection with Leeuwarden Lane.

Zone: R-2 Zone

Date of Public Hearing: July 22, 2003

Time and Place: 8:00 P.M. Room 206 Town Hall

Publication of Hearing Notices

Dates: July 10 & 17, 2003

Newspaper: Darien News-Review

Date of Action: July 22, 2003

Action: APPROVED WITH CONDITIONS

Scheduled Date of Publication of Action:  
July 31, 2003

Newspaper: Darien News-Review

The Commission has conducted its review and findings on the bases that:

- the proposed activities must comply with all provisions of Sections 400, 850 and 1000 of the Darien Zoning Regulations for the Commission to approve this project.
- the size, nature, and intensity of the proposed activities are described in detail in the application, the submitted plans, and the statements of the applicant whose testimony is contained in the record of the public hearing, all of which material is incorporated by reference.
- each member of the Commission voting on this matter is personally acquainted with the site and its immediate environs.

Following careful review of the submitted application materials and related analyses, the Commission finds:

1. The proposal is to fill and regrade as part of the installation of a new garage, modify the existing driveway and perform related site development activities. The proposed driveway will have less impervious surface than the existing driveway. There will be some grading

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along the side of the garage, and a driveway “hammerhead” backing area near the north property line (near the Nightingales).

2. The site plan has been reviewed by the Commission and is in general compliance with the intent and purposes of Section 1000.
3. The proposal conforms to the standards for approval as specified in Section 1005 (a) through (g) of the Darien Zoning Regulations.

NOW THEREFORE BE IT RESOLVED that Land Filling Application #101 is hereby approved subject to the foregoing and following stipulations, modifications and understandings:

- A. The filling and regrading shall be in accordance with the following plans submitted to the Commission:
  - Kosnik Residence Leeuwarden Road, Landscape Site Plan by Robert M. Sherwood Landscape Architect, scale 1”=10’, last revised 6-13-03.
  - Kosnik Residence Leeuwarden Road, Details, by Robert M. Sherwood Landscape Architect, scale as noted, dated 6-13-03.
  - Landscape Plan Kosnik Residence 54 Leeuwarden Road, dated 7-21-03, scale 1”=10’.
- B. Seven spruce trees (either Norway Spruce or Colorado Spruce) each between 8’-9’ high or fifteen 8’-9’ high arborvitae shall be planted ten feet off center and in a line running approximately parallel to, and centered on, the northern edge of the proposed “hammerhead”, as shown on the Landscape Plan dated 7-21-03. These seven trees may include the two spruce trees currently located in the approximate proposed location of this “hammerhead”.
- C. Due to the minor nature of the project, the provision of a Performance Bond is hereby waived.
- D. During construction, the applicant shall utilize any additional measures as may be necessary due to site conditions. Those sediment and erosion controls shall be installed to minimize any adverse impacts during the construction and until the area has been revegetated or restabilized. The Planning and Zoning Department shall be notified prior to commencement of work and after the sedimentation and erosion controls are in place. The staff will inspect the erosion controls to make sure that they are sufficient and are as per the approved plans. All erosion control measures must be maintained until the disturbed areas are stabilized.
- E. In evaluating this application, the Planning and Zoning Commission has relied on information provided by the applicant. If such information subsequently proves to be false, deceptive, incomplete and/or inaccurate, the Commission reserves the right, after notice and hearing, to modify, suspend, or revoke the permit as it deems appropriate.
- F. The granting of this approval does not relieve the applicant of the responsibility of complying with all other applicable rules, regulations and codes of the Town, State, or other regulating agency.

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- G. This permit shall be subject to the provisions of Section 858 of the Darien Zoning Regulations, including but not limited to, implementation and completion of the approved plan within one (1) year of this action (July 21, 2004). This may be extended as per Section 858.

All provisions and details of the plan shall be binding conditions of this action and such approval shall become final upon compliance with these stipulations and the signing of the final documents by the Chairman. A Special Permit form shall be filed in the Darien Land Records within 60 days of this action or this approval shall become null and void.

The motion was made by Mrs. Forman, seconded by Mr. Bigelow and unanimously approved.

**Minutes of May 27, 2003**

The following motion was made: That the minutes be adopted as presented. The motion was made by Mrs. Forman, seconded by Mr. Kenny. Everyone voted in favor of the motion except Mr. Spain because he had not attended the May 27<sup>th</sup> meeting.

**Minutes of June 3, 2003**

The following motion was made: That the Commission adopt the minutes as presented. The motion was made by Mr. Kenny, seconded by Mr. Conze and unanimously approved.

There being no further business, the meeting was adjourned at 11:35 p.m.

Respectfully submitted,

David J. Keating  
Assistant Director of Planning